

(4) An explanation as to why the particular relief sought is deemed to be appropriate.

(c) Petitioners shall promptly furnish any interested party with a copy of the Notice of Exemption and any attachments, free of charge.

[53 FR 4853, Feb. 18, 1988]

§ 1186.9 Safety fitness.

The Commission will consider the DOT safety fitness rating of the parties in transactions where operating authority is purchased or merged. All parties to the transaction must certify their current safety fitness ratings in their Notice of Exemption. If either party has an "Unsatisfactory" safety fitness rating from DOT, the exemption may be disapproved. If parties with "Unsatisfactory" safety fitness ratings consummate a transaction 60 days after publication of the Notice of Exemption but prior to notification of Commission action, they do so at their own risk and subject to any conditions we may impose subsequently. If a Notice of Exemption contains false or misleading information, the exemption is void *ab initio*.

[56 FR 46735, Sept. 16, 1991]

PART 1187—TEMPORARY AUTHORITY IN MOTOR AND WATER CARRIER FINANCE PROCEEDINGS

Sec.

1187.1 Applications governed by these rules.

1187.2 Procedures used generally.

1187.3 Applications.

1187.4 Commission action.

1187.5 Protests.

AUTHORITY: 5 U.S.C. 559 and 49 U.S.C. 10321, 10926, 11341, 11343, 11344, and 11349.

SOURCE: 54 FR 35346, Aug. 25, 1989, unless otherwise noted.

§ 1187.1 Applications governed by these rules.

These rules govern the handling of applications filed for temporary authority to operate motor property carrier, motor passenger carrier, and water carrier properties sought to be acquired in separately filed applications or petitions for exemption under:

(a) 49 U.S.C. 11343–11344 (for authority to consolidate, purchase, merge, or

lease operating rights and properties of, or to acquire control of, motor property carriers, motor passenger carriers, and water carriers); or

(b) 49 U.S.C. 10926 (for the transfer of certificates and permits of motor property carriers, motor passenger carriers, and water carriers).

§ 1187.2 Procedure used generally.

Since the basis for filing applications for temporary authority under these rules is to prevent destruction of or injury to motor carrier or water carrier properties sought to be acquired under 49 U.S.C. 11343–11344 or 10926, these rules are designed to permit the Commission to decide expeditiously temporary authority applications. The Commission has no obligation to give public notice of applications filed under these rules for temporary authority. Cases are decided without hearing or other formal proceeding. However, the rules do permit the Commission, when feasible, to publish notice of temporary authority applications, and such applications may be opposed.

§ 1187.3 Applications.

(a) *Starting the application process.* Persons seeking temporary authority under this section shall complete application form OP-F-46. (See 49 CFR part 1003 and § 1002.2(f)(24) regarding forms and filing fees.) An application for temporary authority may only be filed concurrently with or after the filing of a related application or petition for exemption under 49 U.S.C. 11343–11344 or 10926.

(b) *Information to be submitted by applicants.* The application form constitutes applicants' entire case and shall contain all of the information on which applicants intend to rely.

(c) *Where the application is sent.* The original and one copy of the application shall be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423, along with the application fee. In addition, one copy of the application shall be sent by applicants to each of the persons and State officials specified on the application form. When an application for temporary authority is filed after the filing and publication of notice of

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the related acquisition transaction (under 49 U.S.C. 11343–11344 or 10926), applicants also shall serve a copy of the temporary authority application on all parties of record in the related transaction as of the date of the filing.

§ 1187.4 Commission action.

(a) Where an application for temporary authority is filed concurrently with the related acquisition application or petition for exemption, notice of filing of the temporary authority application will appear in the published notice of the corresponding permanent application or petition.

(b) The temporary authority application (and protests, if any) will be submitted to an appropriate decisional body for disposition as soon as possible after filing. These rules do not provide for any specific time period for the filing of opposition to concurrently filed temporary authority applications. A temporary authority request may be acted upon before the publication of the related permanent application or petition for exemption.

§ 1187.5 Protests.

(a) *Who can oppose an application.* A protest to an application for temporary authority filed under these rules may be filed only by persons who oppose or intend to oppose the related permanent application or petition for exemption filed under 49 U.S.C. 11343–11344 or 10926.

(b) *Contents of a protest.* A protest to an application for temporary authority shall be in writing. The protest shall state the protestant's interest in the proceeding and the specific grounds on which protestant relies in opposing the temporary authority application. The protest also shall indicate that a copy has been served on applicants' representative(s).

(c) *To whom the protest is sent.* The original and one copy of the protest shall be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423. A copy of the protest shall be served on applicants' representative(s).

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PART 1188—GROSS OPERATING REVENUES OF CARRIERS INVOLVED IN FINANCE PROCEEDINGS

Sec.

1188.1 Computation of gross operating revenues of carriers involved in unifications.

1188.2 Deduction of revenues from sources other than regulated transportation.

AUTHORITY: 5 U.S.C. 559 and 49 U.S.C. 10321, 11341, 11343, 11344, and 11345a.

SOURCE: 54 FR 35346, Aug. 25, 1989, unless otherwise noted.

§ 1188.1 Computation of gross operating revenues of carriers involved in unifications.

In proceedings involving consolidation, merger, or acquisition of control of motor carriers under 49 U.S.C. 11343, the aggregate gross operating revenues of carriers attributable to transportation from the use of their respective operating rights subject to subchapter II of chapter 105 of the Act shall be deemed to have exceeded \$2 million for the period of 12 consecutive months ending not more than six months preceding the date of the agreement of the parties covering the transaction, within the meaning of 49 U.S.C. 11343(d)(1), unless otherwise shown, under each of the following circumstances:

(a) At the end of the preceding calendar year the carriers involved in the transaction filed reports with the Commission, as required by 49 U.S.C. 11145, showing annual gross operating revenues from motor carrier operations totaling more than \$2 million, and none of the carriers has sold or otherwise disposed of any portion of its operating rights subsequent to the end of the preceding calendar year;

(b) A carrier involved in the transaction filed a quarterly report or reports for subsequent quarters, and a reasonable estimate of its annual gross operating revenues and the reported annual gross operating revenues of the other carriers involved in the transaction for the preceding calendar year aggregates more than \$2 million; or

(c) A reasonable estimate of: